IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
A.O. No. 661/2006

U.P. State Road Transport Corporation through
its General Manager, Lucknow ..... Appellant.

Vs.

1. Smt. Dayawati Giri W/o late Raj Kumar,
   R/o 20/4 Adarsh Nagar Roorkee,
   District Haridwar.
2. Sanjay Giri S/o late Raj Kumar,
3. Km. Santosh Giri D/o late Raj Kumar,
4. Km. Sonia Giri D/o late Raj Kumar,
5. Master Mohit Giri S/o Raj Kumar,
   All are residents of 20/4 Adarsh Nagar
   Tehsil Roorkee, Distict Haridwar .....Respondents.

Sri Ashish Joshi, learned counsel for the appellant.

Hon'ble B.C. Kandpal, J.:

This appeal U/S 173 of the Motor Vehicles Act, 1988, has been preferred by the U.P. S.R.T.C. against the judgment and award dated 30-5-2003 passed by II F.T.C./Addl. District Judge, MACT Haridwar in MAC Case No. 79/1996, Smt. Dayawati and others Vs. Amar Singh and another, thereby awarding Rs. 1,65,400/- as compensation against the U.P.S.R.T. as well as the driver of the offending vehicle jointly and severely.

2- The facts of the case are that on 12-2-90 at 9-15 P.M. Raj Kumar Giri riding on his scooter, bearing registration No. B.H.P. 8938, was coming from Manglaur toward Roorkee, suddenly the roadways bus No. U.H.N. 1382 driven by O.P. Amar Singh in high speed dashed the scooter, due to which the scooterist Raj Kumar Giri sustained grievous injuries and he was rushed to Civil Hospital, Haridwar, where he was declared dead. The claimants preferred claim petition in lieu of death of Raj Kumar Giri for compensation of Rs. 3,60,000/-.

3- The O.P. driver of the offending bus filed his written statement before the Tribunal and alleged that the accident did not occur from bus NO. U.H.N. 1382. The bus at the time of accident was standing on the kuchha side of the road.

4- The O.P. U.P.S.R.T.C. contested the case and alleged that the offending bus does not belong to its Dehradun region. It also denied the accident.

5- The Tribunal framed issues on the basis of pleadings of parties and thereafter parties led evidence in support of their cases.

6- The Tribunal after hearing learned counsel for the parties and perusing the evidence on recorded allowed the claim petition and awarded Rs. 1,65,400/- as compensation to be paid by both the O.Ps. driver of the offending bus as well as the owner U.P.S.R.T.C. jointly and severally.

7- Feeling aggrieved the U.P.S.R.T.C. has preferred this appeal before this court.

8- Heard learned counsel for the parties and perused the record.

9- The learned counsel for the appellant has submitted that the accident did not occur due to the negligence of the driver of the offending vehicle and the learned Tribunal has committed manifest error in holding the appellant liable to pay compensation. It was also submitted that the exorbitant amount of compensation has been awarded by the Tribunal.

10- Having perused the record, I am of the view that the submissions raised by the learned counsel for the appellant, have no substance.

11- The claimants have produced P.W.2, Julfikar, an eye witness of the accident. This witness has categorically stated that the driver of the offending bus dashed the scooterist and the accident had occurred. This witness has not been cross-examined from the side of the opposite parties regarding the factum of accident and on the point of rash and negligent driving by the driver of the offending bus. Amar Singh the driver of the bus has been produced as D.W.1. This witness has denied that he was driving the vehicle at the time of accident, whereas the statement of P.W.1, Amar, Julfikar, an eye witness of the occurrence, clearly establish that this person was driving the bus at the time of the accident. The statement of Julfikar in this regard goes un-rebutted. It is also note-worthy that the driver Amar Singh was prosecuted for causing this accident and charge sheet U/Ss 279, 304-A and 338 I.P.C. was submitted against him before the court concerned. The offending bus was also seized. Therefore, the accident by the offending bus has been amply proved.

12- So far as the quantum of compensation is concerned, the Tribunal has assessed the income of the deceased as Rs. 1800/- per month. P.W.1 Smt. Dayawati Devi has deposed that her husband Raj Kumar was doing the work of Hotel and was earning Rs. 6000/- per month. I find that the Tribunal was justified in assessing the income of the deceased as Rs. 1800/- per month and after deducting 1/3rd as personal expenses Rs. 1200/- per month was assessed the dependency of the claimants on the deceased. Smt. Daywati P.W.1 has

deposed that her husband Raj Kumar Giri at the time of accident was 50 years of age. The age of the deceased in the post mortem report was shown as 55. In this way multiplier of 11 has rightly been adopted by the Tribunal. The claimants were also awarded Rs. 2,000/- for expenses towards cremation and Rs. 5,000/- as consortium. I find no infirmity in the impugned judgment and award and the same does not require any interference.

13- The appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned judgment and award dated 30-5-2003 passed by Addl. District Judge/ MACT, Haridwar in MAC Case No. 79/1996, is hereby affirmed.

(B.C. Kandpal, J.)

Dated: November 01, 2006.
ISB